

Johnston & Associates, LLC

2099 Pennsylvania Avenue, N.W., Suite 1000

Washington, D.C. 20006

Tel: (202) 659-8400 Fax: (202) 659-1340

February 18, 2004

Ms. Marlene Dortch
Secretary
Federal Communications Commission
445 Twelfth Street, SW
Washington, DC 20554

Re Notice of Ex Parte Presentations in Nationwide Programmatic Agreement proceeding, WT Docket No. 03-128; FCC 03-125.

Dear Ms. Dortch:

This letter summarizes a series of meetings held with FCC Commissioners and staff with regard to the above captioned proceeding.

In all of these meetings, representatives of the United South and Eastern Tribes, Inc. raised three issues. First, USET raised its concern over a letter sent by Chairman Pombo and Subcommittee Chairman Radanovich of the House Resources Committee regarding the definition of "historic property" under the National Historic Preservation Act. USET explained its understanding that Chairman Pombo and Subcommittee Chairman Radanovich did not intend any definitional change to affect Indian properties. Second, USET reiterated its opposition to proposed exclusions under the draft Nationwide Programmatic Agreement, focusing in particular on the exclusion for interstate and railroad rights of way, etc. Finally, USET repeated its support for its proposed alternative in the draft Nationwide Programmatic Agreement regarding participation of Indian tribe and Native Hawaiian organizations in undertakings off tribal lands.

The USET representatives also explained their position that the FCC has two separate legal obligations under the National Historic Preservation Act relevant to tribal interests. The first obligation is to take into account the effects of FCC undertakings on properties of religious and cultural importance to tribes that are or may be eligible for the National Register. 16 U.S.C. Section 470f and Section 470a(d)(6)(A). The second, and completely distinct obligation is to consult with tribal governments to secure their official, governmental views regarding a proposed FCC undertaking that could affect such a tribal cultural and religious property. 16 U.S.C. Section 470a(d)(6)(B). USET further stated its position that, when it comes to meeting the first obligation, which requires the assessment of properties of religious and cultural importance to Tribes, Tribes have unique and special expertise for which compensation, as with other experts

who provide their professional services, should be due. USET representatives also indicated in the meeting that USET was looking for a “win-win” solution but if no such solution could be identified to the Tribes’ satisfaction that there would be a need for the FCC and Tribes to consult on many tower sitings.

USET representatives presented a letter USET sent to Gerald Vaughan dated December 22, 2003 that sets forth in detail USET’s position on the “special expertise” of tribes. The letter to Mr. Vaughan has been separately submitted to the record of this proceeding. Among other things, the letter notes that ACHP regulations state that “agency official[s] shall acknowledge that Indian Tribes and Native Hawaiian organizations possess special expertise when it comes to assessing the eligibility of historic properties that may possess religious and cultural significance to them.” 36 C.F.R. Section 800.4(c)(1). The letter also describes the central nature of consultation in the government-to-government relationship between tribes and the United States, citing the FCC’s own policy statement, as well as Executive Orders and the ACHP policy statement. These documents demonstrate that consultation involves meaningful interaction between the consulting parties.

Set forth are the meetings with a list of the participants:

Friday, January 30, 2004

Cheryl Wilkerson, Legal Advisor, Office of the FCC Chairman
Kris Monteith, Consumer and Governmental Affairs Bureau
Jeff Steinberg, Commercial Wireless Division
James T. Martin, Executive Director, United South and Eastern Tribes
Gregory Smith, Johnston & Associates

January 30, 2004

FCC Commissioner Kathleen Abernathy
Jennifer Manner, Senior Counsel, Office of Commissioner Abernathy
James T. Martin, Exec. Dir, United South and Eastern Tribes, Inc.
Gregory Smith, Johnston & Associates
Ken Carleton, Vice Chairman, USET Culture and Heritage Committee

February 2, 2004

FCC Commissioner Kevin Martin
Daniel Gonzalez, Office of Commissioner Martin
James T. Martin, Executive Director, United South and Eastern Tribes
Gregory Smith, Johnston & Associates

February 5, 2004

FCC Commissioner Jonathan Adelstein
Barry Ohlson, Legal Advisor, Office of Commissioner Adelstein
Ken Carleton, Vice Chairman, USET Culture and Heritage Committee
Doug Harris, Narragansett Tribe
Eric Tober, Johnston & Associates

February 12, 2004

FCC Commissioner Michael Copps

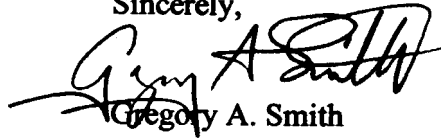
Jordan Goldstein, Office of Commissioner Copps

James T. Martin, Exec. Dir, United South and Eastern Tribes, Inc.

Gregory Smith, Johnston & Associates

If you have any questions regarding this matter, please feel free to call.

Sincerely,

A handwritten signature in black ink, appearing to read "Greg A Smith", written over the printed name.

Gregory A. Smith